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APPLICATION NO	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO	CONFIRMATION NO
09 806,157	03 28 2001	Tatsuya Yamamoto	010425	5168

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EXAMINER

TRAN LIEN, THUY

ART UNIT	PAPER NUMBER
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1761

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DATE MAILED: 02 26 2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.
09/806,157

Applicant(s)
Yamamoto et al.

Examiner
Lien Tran

Art Unit
1761



-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on Mar 28, 2001
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-16 is/are pending in the application.
- 4a) Of the above, claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-16 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claims _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are objected to by the Examiner.
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

- 13) ☒ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
- a) ☒ All b) ☐ Some* c) ☐ None of:
- ☒ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- *See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

- 15) ☒ Notice of References Cited (PTO-892) 18) ☐ Interview Summary (PTO 413) Paper No(s)
- 16) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 19) ☐ Notice of Informal Patent Application (PTO-152)
- 17) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 4 20) ☐ Other

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1. Receipt is acknowledged of papers submitted under 35 U.S.C. 119(a)-(d), which papers have been placed of record in the file.
2. Claims 2-4 and 8 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In the claim 2, " the external sauce layer" does not have antecedent basis.

Claims 3-4 are unclear; 10 to 40 degree what?

In claim 8, the phrase " small water content" is indefinite; the term " small" is a relative term.

What would be considered as " small"?

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371© of this title before the invention thereof by the applicant for patent.

4. Claims 1-2,6,8,9,10,12 are rejected under 35 U.S.C. 102(e) as being anticipated by Scherpf et al.

Scherpf et al disclose a process for making free-flowing, coated, frozen food. The process can be used to coat pieces of food as small as rice, as well as pieces of pasta. The process is especially useful in preparing pasta coated with a thick sauce such as a tomato, Alfredo or cheese sauce. The pasta can be either fresh, extruded or dry, cooked pasta. An intermediate coating of a

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solid or liquid food-acceptable fatty material is applied to the cooked pasta before the pasta is frozen. The fatty material can be soybean oil, corn oil, olive oil, cotton seed oil, butter, cream or margarine. The amount of fatty material coated on the cooked pasta is typically from about .1-5%. The cooked pasta is then individually quick frozen(IQF). The IQF pasta is then loaded into the coating vessel to be coated with a liquid coating material. Sufficient cryogen is introduced into the coating vessel to cool the free-flowing pieces. The coating process can be repeated. The coatings preferably weigh in the range of from about 5-75% weight %. The coated, frozen pasta can be subsequently packaged. (See columns 4-6)

The reference discloses all the limitations of the above cited claims.

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

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7. Claims 3-5,7,11 and 13-16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Scherpf et al.

The teaching of Scherpf et al is described above. Scherpf et al do not disclose a starch layer or a mixture of starch and oil, the sugar content and boiling the rice after coating with oil or fat.

It is well known in the art that starch is gel forming material and the use of starch forms a layer on a substrate. It would have been obvious to one skilled in the art to use such starch layer instead of oil layer to prevent moisture migration when a liquid coating is used to coat the rice. The use of fatty material increases the fat and calorie content of the product and this may not be desirable if one wants to make a low calorie and reduced fat product. It would also have been obvious to use a mixture of starch and oil because both are known for film forming and moist migrating- preventing function. The use of a mixture of fat and starch reduces the calorie to an extent and the fat enhances the flavor and taste of the product. As to the sugar content, this would have been obvious to have any varying sugar content depending on the taste and flavor desired. It would also have been obvious to boil the rice if a cooked product is desired.

8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Meyer et al disclose a full moisture shelf stable rice product.

Virtanen discloses a method for preparing a food portion.

Barnes et al disclose a process of making frozen pasta.

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Brimelow et al disclose a coated pasta for providing firm texture.

Patterson et al disclose a process for preparing non-browning, enrobed pasta.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lien Tran whose telephone number is (703) 308-1868. The examiner can normally be reached on Wed-Fri. The fax phone number for the organization where this application or proceeding is assigned is (703) 305-7718.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0661.

February 22, 2002


LIEN TRAN
PRIMARY EXAMINER
